

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendments, claims 1, 3 and 8 are pending in the application, with claim 1 being the independent claim. Support for the amendments to claims 1 and 8 can be found in use examples A and B on pages 4-5 of the specification as filed. Support for the amendments to claims 1 and 3 can be found on page 2, lines 3, 4, 7 and 8 of the specification as filed. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Description of the Invention

The present invention relates to, *inter alia*, the use of 2,2-dimethyl-3-(2,4-dichlorophenyl)-2-oxo-1-oxaspiro[4,5]dec-3-en-4-yl butanoate (compound I) for controlling acarids in hops, berries, or conifers, wherein the conifers are selected from the group consisting of spruces and firs, and wherein the compound of formula (I) is applied at a concentration of 0.0048% active ingredient per hectare to 0.0144% active ingredient per hectare.

Rejections under 35 U.S.C. § 102

Rejection of claims 1 and 3 under 35 U.S.C. § 102(b) as allegedly being anticipated by Wachendorff *et al.*, BCPC Conf. - Pests Dis. 1:53-58 (2000) ("Wachendorff") is respectfully traversed. The Office also cites Gallander, "Chemistry

of grapes and other fruits as the raw materials involved in winemaking," *Advances in Chemistry* 137:11-49 (1974) ("Gallander"), as allegedly disclosing that grapes are a soft fruit. Gallander, p. 13.

Claim 1 has been amended to recite a method of controlling acarids comprising contacting a compound of formula I (spirodiclofen) with hops, berries, or conifers, wherein the conifers are selected from the group consisting of spruces and firs, and wherein the compound of formula (I) is applied at a concentration of 0.0048% active ingredient per hectare to 0.0144% active ingredient per hectare. Wachendorff does not indicate that spirodiclofen may be used in hops, berries, or conifers at a concentration of 0.0048% active ingredient per hectare to 0.0144% active ingredient per hectare. Therefore, Wachendorff does not teach each and every element of the claim. Applicants respectfully request that the rejection be withdrawn.

Rejection of claims 1 and 3 under 35 U.S.C. § 102(a) as allegedly being anticipated by Elbert *et al.*, *Pflanzenschutz-Nachrichten Bayer* 55:287-304 (2002) ("Elbert") is respectfully traversed.

The Office states that Elbert teaches use of spirodiclofen for control of acarids in fruits such as citrus, pome and stone fruits, grapes and almonds. Elbert does not indicate that spirodiclofen may be used in hops, berries, or conifers at concentration of 0.0048% active ingredient per hectare to 0.0144% active ingredient per hectare. Therefore Elbert does not teach each and every element of the claim. Applicants respectfully request that the rejection be withdrawn.

Rejections under 35 U.S.C. § 103

The rejection of claim 8 under U.S.C. § 103(a) as allegedly being obvious over Wachendorff in view of Weidhaas, "Spider mite and other acarina on trees and shrubs," *Journal of Arboriculture 5(1):9-15 (1979)* is respectfully traversed.

Claim 8 recites a method of controlling acarids in spruces or firs wherein the compound of formula (I) is applied at a concentration of 0.0048% active ingredient per hectare to 0.0144% active ingredient per hectare. The Office states that Wachendorff does not specifically teach the use of spirodiclofen in conifers, this deficiency is allegedly cured by Weidhaas. Office Action, p. 6. Applicants respectfully disagree.

As stated above, Wachendorff does not provide any guidance regarding applying spirodiclofen to spruces and firs at a concentration of 0.0048% active ingredient per hectare to 0.0144% active ingredient per hectare. Weidhaas also does not provide any guidance as to the amount of spirodiclofen that should be applied to spruces for the control of mites. Furthermore, Weidhaas states that "different insects may or may not be controlled effectively by certain pesticides, mites are variably susceptible also." Weidhaas, p. 14, col. 2, lines 29-31. A person of ordinary skill in the art reading Weidhaas would therefore not have a reasonable expectation of achieving acaricidal activity upon applying spirodiclofen to spruces and firs at the instantly claimed concentrations. Applicants respectfully request that the rejection of claim 8 be withdrawn.

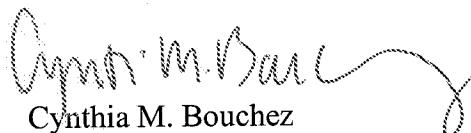
Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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